

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201708613	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/10/2017 9:19 PM	Location of Incident: Inside § 87(2)(b)	Precinct: 83	18 Mo. SOL 4/10/2019	EO SOL 4/10/2019	
Date/Time CV Reported Wed, 10/11/2017 6:19 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/17/2017 11:07 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Guerdy Guerrier	25602	953936	083 PCT
2. POM Christian Romero	08122	957100	083 PCT
3. POM Daniel Atherley	01422	956399	083 PCT
4. SGT Adam Dumelle	00271	948001	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fredrick Nelson	01590	949386	083 PCT
2. POF Savanna Domenech	03919	960470	083 PCT
3. LT Olvin Serrano	00000	939452	083 PCT
4. POM Michael Brooks	09312	922943	083 PCT
5. POM Mariano Borges	22151	915332	083 PCT
6. POM Ryan Kelly	20882	958747	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Adam Dumelle	Abuse: Sergeant Adam Dumelle entered § 87(2)(b) in Brooklyn.	
B.POM Guerdy Guerrier	Abuse: Police Officer Guerdy Guerrier drew his gun.	
C.POM Daniel Atherley	Abuse: Police Officer Daniel Atherley drew his gun.	
D.POM Guerdy Guerrier	Abuse: Police Officer Guerdy Guerrier threatened § 87(2)(b) with the use of force.	
E.SGT Adam Dumelle	Abuse: Sergeant Adam Dumelle drew his gun.	
F.POM Christian Romero	Abuse: Police Officer Christian Romero drew his gun.	
G.POM Christian Romero	Force: Police Officer Christian Romero used physical force against § 87(2)(b)	
H.POM Christian Romero	Force: Police Officer Christian Romero used physical force against § 87(2)(b)	
I.POM Christian Romero	Abuse: Police Officer Christian Romero damaged § 87(2)(b)'s property.	

## Case Summary

On October 11, 2017, Capt. Hugo Dominguez of the 83<sup>rd</sup> Precinct filed this complaint on behalf of § 87(2)(b) with IAB over the telephone, generating log #17-39651. It was received by the CCRB on October 17, 2017.

On October 10, 2017, at approximately 9:19 p.m., Sgt. Adam Dumelle and PO Christian Romero of the 83<sup>rd</sup> Precinct entered § 87(2)(b) in Brooklyn (**Allegations A: Abuse of Authority, § 87(2)(g)** PO Guerdy Guerrier and PO Daniel Atherley of the same command drew their guns and PO Guerrier allegedly threatened § 87(2)(b) with the use of force (**Allegations B and C, Abuse of Authority § 87(2)(g)** **Allegation D, Abuse of Authority, § 87(2)(g)** Sgt. Dumelle and PO Romero also drew their guns (**Allegations E and F: Abuse of Authority, § 87(2)(g)** PO Romero allegedly threw § 87(2)(b) to the floor, stepped on his hand and damaged his property (**Allegations G and H: Force, § 87(2)(g)** **Allegation I: Abuse of Authority, § 87(2)(g)**

There is no video recording of the incident.

## Findings and Recommendations

### Allegation (A) Abuse of Authority: Sergeant Adam Dumelle entered § 87(2)(b) in Brooklyn.

When interviewed at the CCRB, § 87(2)(b) stated that his former tenant § 87(2)(b) came to his house at § 87(2)(b) in Brooklyn with his belongings after having had a verbal confrontation with his girlfriend § 87(2)(b) [BR 05]. § 87(2)(b)'s ex-wife owns the house but he is the only person residing there. His girlfriend § 87(2)(b) used to live with him but moved out three months ago. § 87(2)(b) and § 87(2)(b) had a conversation during which § 87(2)(b) did not mention anything about a physical confrontation between him and § 87(2)(b). Since § 87(2)(b) had previously made false accusations against § 87(2)(b) and § 87(2)(b) before, § 87(2)(b) believed that on the day of the incident, she also called the police and made false allegations involving his house. In addition, § 87(2)(b) also called him and told him that § 87(2)(b) “was doing her thing” again. After the conversation, § 87(2)(b) informed § 87(2)(b) he was going to step outside and § 87(2)(b) went to the back room. He did not see or hear § 87(2)(b) exit but believed that he left and shut the door since at approximately 10:00 p.m., he heard knocking on his door. § 87(2)(b) heard police officers announce who they were and became scared since he had an active warrant regarding child support since 2016. § 87(2)(b) did not open the door and the officers continued knocking for approximately 10 minutes. § 87(2)(b) went to the back window to escape and eventually some officers entered his house forcefully. After § 87(2)(b) was arrested and escorted out of the house, he saw § 87(2)(b) and her friend § 87(2)(b) on the porch and noted he was unaware when they got home. He denied being involved in any physical altercation with § 87(2)(b) and having any guns in his house. § 87(2)(b) was consistent in his preceding statement to the CCRB in regards to this allegation [BR 04].

In her verified statement to the CCRB, § 87(2)(b) explained that she came to § 87(2)(b)'s house at approximately 7:00 p.m. to collect some of her personal belongings [BR 06]. She then noted that she resided at the location with § 87(2)(b) and § 87(2)(b) periodically stayed with them. Between 9:00 p.m. and 10:00 p.m., she and § 87(2)(b) were sitting on the

porch, possibly having a beer, when § 87(2)(b) came over and related to them about the argument with § 87(2)(b). Everyone went inside the house, and approximately 30 minutes later, police arrived and started knocking on the door after having identified themselves. As soon as § 87(2)(b) heard that, he ran out of the house through the back window. § 87(2)(b) went to the back of the house, looked out the window and observed flashlights in the backyard. Therefore, she assumed that officers entered the backyard through the basement that can be accessed through the front of the house. § 87(2)(b) told § 87(2)(b) to run because he had some issues with child support. § 87(2)(b) went to the window so that he could also jump and escape and § 87(2)(b) went to the front bedroom where she remained for approximately 10 to 15 minutes while the officers continued to knock on the door. § 87(2)(b) did not open the door for them since she did not know if she had a warrant and eventually went to an upstairs bedroom where § 87(2)(b) was. The officers eventually entered the house forcefully by breaking down the door.

In her unverified phone statement to the CCRB, § 87(2)(b) stated she was not present during the incident but was aware that on an unknown date § 87(2)(b) assaulted § 87(2)(b) and was arrested for an outstanding warrant inside his house [BR 08]. § 87(2)(b) denied being involved in any altercations on the day of the incident or making the 911 call but noted that § 87(2)(b) borrowed one of her three cell phones and made the call. However, § 87(2)(b) later stated she and another unidentified female called 911. § 87(2)(b) was uncooperative with the investigation [BR 09, 10].

Since no additional identifying information was provided for § 87(2)(b) the investigation could not establish contact with her.

PO Romero testified that he responded to the location together with PO Atherely and PO Nelson shortly after receiving a radio transmission in regards to an unspecified crime being committed there with a firearm [BR 12]. He did not have any background information about the house. Once they arrived on the scene, the dispatcher was unable to reach the 911 caller and PO Romero called them himself. A female answered the phone and whispered she needed help. He did not recall if he inquired whether she was inside the building and recalled that all he got was that she needed help. The female disconnected the call and PO Romero called back but did not receive a response. While on scene, PO Romero noticed movement on the first floor of the house and knocked on the door but no one answered. He could hear things moving around as the window on that floor was open and the lights inside were on. However, he did not see anyone in particular through the window. Immediately after making the calls, PO Romero relayed what he knew to his partners and his supervisor, Sgt. Dumelle, who arrived on the scene with his operator PO Guerrier. Sgt. Dumelle made a decision to break down the door of the premises due to the emergency situation and did so with a sledgehammer. Sgt. Dumelle and PO Romero announced themselves and entered the house, while PO Nelson, PO Atherley and PO Guerrier went to the roof of the building.

When interviewed at the CCRB, Sgt. Dumelle stated he and his operator responded to the location because they received a transmission about a female being hit with a gun there [BR 11]. While he did not recall if the dispatcher mentioned any history of the location, Sgt. Dumelle noticed that there had been three previous domestic violence incidents there on his department issued phone. He and PO Guerrier arrived on the scene approximately three minutes after the transmission. PO Romero informed him of the outcome of his call to the victim and his unsuccessful calls back. Sgt. Dumelle did not know if PO Romero, PO Atherley and PO Nelson tried knocking at the door but assumed they did since they were all on the stairwell leading to it.

Sgt. Dumelle also went up the stairs, announced who he was and knocked on the door several times but did not receive an answer. He looked in the window that was within an arm's length from the entrance and observed a white female with light hair, 5'4" tall, in her 30s or 40s, possibly § 87(2)(b). She was standing still facing Sgt. Dumelle with her back to the wall. It appeared as though she was staring at something he did not see. He could not tell if the female was injured. Sgt. Dumelle did not hear any sounds apart from the TV that was on. Sgt. Dumelle called the woman to the window, asked if she needed help but she did not respond or acknowledge him. He also asked if the officers could come in but the female did not respond either. Since the window was open, Sgt. Dumelle knew she could hear him. Sgt. Dumelle decided to take down the door due to the fact that the call involved a gun. In addition, he believed the female might have been in danger and was scared or did not want the police to think she was inside. He also believed there could have been someone threatening her not to acknowledge the police since she was just staring somewhere and did not react to him. Sgt. Dumelle took an axe from one of the police cars and knocked on the door one more time but received no response. He instructed PO Guerrier and PO Nelson to go on the roof and PO Atherley stayed in front of the property in case anyone jumped out of the window. Sgt. Dumelle was unaware of any escape routes from the building but assumed there was a back window and possibly a fire escape. Approximately five to seven minutes had passed since Sgt. Dumelle's arrival, he broke down the door with no assistance and entered the premises with PO Romero. Since Sgt. Dumelle made the decision to enter the premises and was the highest ranking officer on the scene at the time, Allegation A is being pleaded against him.

PO Atherley's account of the circumstances was generally consistent with that of PO Romero and Sgt. Dumelle's [BR 15].

PO Nelson confirmed that he and his partners attempted to get a resident of the building to open the door for five to 10 minutes, however he did not recall observing anyone from the window or hearing anything [BR 14].

PO Guerrier testified that he went to the roof immediately upon arrival and did not indicate that he heard or saw anyone in the window of the house [BR 13].

According to the 911 call recording associated with NYPD Event #§ 87(2)(b) a female who identified herself as "§ 87(2)(b)" stated that a black male had hit her and another female "§ 87(2)(b)" with a gun inside § 87(2)(b) [NYPD 16]. This information was related in the subsequent Radio Communication as well as the fact that the location has a prior domestic violence history and calls related to an emotionally disturbed person [NYPD 18]. Approximately one minute after the initial transmission, Unit 83A or 83 NCOA requested the dispatcher to call back the alleged victim, which she did. § 87(2)(b) responded, stated that the perpetrator was still at the location hitting § 87(2)(b) and provided a more detailed description of him. The Event listed above noted the call-back number that belonged to § 87(2)(b) § 87(2)(b).

Although PO Atherley noted he prepared a property damage report for the front door, which is also documented in the IAB log, it was not provided by the 83<sup>rd</sup> Precinct [BR 15] [NYPD 01, 25].

§ 87(2)(b)

Officers may conduct a warrantless entry into premises under the emergency doctrine only if the following three conditions are met: they must reasonably believe emergency is at hand, search or entry must not be motivated by intent to arrest or seize evidence and the emergency must reasonably be associated with the target premises. People v. DePaula, 179 A.D. 2d 424 [BR 17]. In this case, officers who responded to shots fired within minutes of the transmission and were met with a startled male at the door were justified in entering the apartment believing there was emergency at hand. In addition, according to Brigham City v. Stuart, 547 U.S. 398, an officer's subjective reason is not material if exigent circumstances in the case exist [BR 24].

§ 87(2)(b), § 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Guerdy Guerrier drew his gun.**  
**Allegation (C) Abuse of Authority: Police Officer Daniel Atherley drew his gun.**  
**Allegation (D) Abuse of Authority: Police Officer Guerdy Guerrier threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that when he reached the back room, approximately at the same time of the officers' entry into his house, he exited to the window ledge where he stood with his back to the house outside wall [BR 05]. An officer pointed his flashlight at § 87(2)(b) from the roof, approximately 30 feet up, and told him not to move otherwise he was going to "blow" his "head off." Several officers inside § 87(2)(b)'s house now told him to get inside. § 87(2)(b) explained that to the officer on the roof who instructed him to listen to the commands of the officers inside the house. After talking to the officers for approximately 10 minutes, § 87(2)(b) got back into the house. § 87(2)(b) was consistent in his preceding statement to the CCRB in regards to this allegation [BR 04].

§ 87(2)(b) testified she was in the upstairs bedroom and did not indicate she witnessed this allegation [BR 06].

PO Guerrier, PO Atherley and PO Nelson all confirmed they went to the roof by requesting access from the residents of an adjacent to § 87(2)(b) building [BR 13, 14,

15]. PO Nelson indicated he was just standing in the middle of the roof and never approached the ledges since he is afraid of heights [BR 14]. He denied committing the alleged misconduct or witnessing his partners do so.

PO Guerrier indicated after he got to the roof, he looked over the back ledge and in approximately one minute, saw § 87(2)(b) hanging out of the back window from the first floor, located two floors down from PO Guerrier [BR 13]. PO Guerrier ordered § 87(2)(b) to stay still several times since he was fidgeting and saying he was not the person the officers were looking for. PO Guerrier was not certain if his partners issued him any commands. PO Guerrier had his gun drawn and pointed at § 87(2)(b) and was shining his flashlight. He did so because it was reported that a perpetrator had a firearm and matched the description broadcast over the radio, which he did not recall at the time of the interview. PO Guerrier denied making the alleged statement or threatening him with the use of force otherwise. He did not recall if other officers had their guns drawn or threatened § 87(2)(b) with the use of force. After approximately 30 seconds, § 87(2)(b) indicated there were officers inside his house instructing him to come inside, which PO Guerrier heard as well. PO Guerrier told § 87(2)(b) to follow their instructions and § 87(2)(b) complied. PO Guerrier holstered his gun after that.

PO Atherley's account of the events on the roof was consistent with that of PO Guerrier's apart from the following details [BR 15]. PO Atherley said he drew his gun and pointed it downward along his body as soon as he observed § 87(2)(b) hanging from the window because of the nature of the call and the fact that it was dark outside. PO Guerrier drew his gun at the same time and held it in his hand that was resting along his body pointed downward. PO Atherley did not take out his flashlight at the time for the purpose of balance. PO Atherley was unaware whether PO Nelson drew his weapon since he was standing on the adjacent roof the entire time. PO Guerrier told § 87(2)(b) not to move and he did not respond and continued to hang. This instruction was issued to § 87(2)(b) once. When § 87(2)(b) inquired who he should listen to, PO Atherley told him to follow the instructions from the officers inside. When § 87(2)(b) entered the house, PO Atherley holstered his weapon and was unsure when PO Guerrier did the same. Since PO Guerrier was the only officer on the roof who instructed § 87(2)(b) not to move, Allegation D is being pleaded against him.

Neither Sgt. Dumelle nor PO Romero acknowledged hearing the alleged statement coming from the officers on the roof [BR 11, 12].

Based on NYPD Event #§ 87(2)(b) the perpetrator was described as a black male wearing a black shirt [NYPD 05].

In People v. DePaula, 179 A.D. 2d 424 cited above officers were also justified in entering the apartment with their guns drawn pursuant to the emergency doctrine and the circumstances preceding the call that involved a reported crime with a firearm [BR 17]. Based on NYPD Patrol Guide Procedure 221-01, an officer's decision to draw or display a firearm must be based on articulable belief that a potential threat of serious physical injury is imminent [BR 18]. The officer must secure his gun once the threat no longer exists. According to New York Penal Law §35.30, officers may use force to prevent an individual from escaping custody or in self-defense or in defense of others [BR 19].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Abuse of Authority: Sergeant Adam Dumelle drew his gun.**

**Allegation (F) Abuse of Authority: Police Officer Christian Romero drew his gun.**

**Allegation (G) Force: Police Officer Christian Romero used physical force against § 87(2)(b).**

**Allegation (H) Force: Police Officer Christian Romero used physical force against § 87(2)(b).**

§ 87(2)(b) stated that after he climbed back into the house, he started walking backwards with his hands up [BR 05]. When he was climbing back, he could not see the officers because they were standing in the hallway that was not visible from the window area. As § 87(2)(b) was walking backwards, an officer ran up to him and took him to the floor with his entire body. No commands were given to § 87(2)(b) at that point apart from the ones mentioned earlier. § 87(2)(b) landed on his face, chest and stomach and his arms were lying along his body with his palms outward. The officer placed his knee on § 87(2)(b)'s right lower rib cage area and put his entire foot on § 87(2)(b)'s left hand. § 87(2)(b) started screaming, "My hand, my hand," but the officer remained in that position for approximately 10 minutes without saying anything. § 87(2)(b) started feeling pain in his back and hand right away. § 87(2)(b) never resisted since he was taken to the ground very abruptly. While the officer was holding him, § 87(2)(b) observed his face and upper body. He was described as a white male, 5'8" tall, 200 pounds, in his 40s, bald, wearing plain clothes. § 87(2)(b) was handcuffed only after an officer in a white shirt came in, approximately 10-20 minutes later, and instructed to handcuff him. § 87(2)(b) started feeling pain in his hand when he was being transported to the stationhouse, and an ambulance was called for him at some point between 12:00 am and 4:00 am of the following day. § 87(2)(b) was inconsistent in providing the time of the ambulance arrival. He was taken to § 87(2)(b) in Brooklyn where he was diagnosed with a sprained left pinky finger. § 87(2)(b) then indicated he was discharged from the hospital at 4:00 a.m. § 87(2)(b) explained that approximately two months prior to the incident he noticed he had a small tumor the size of a "quarter of a marble" on his left pinky finger and made an appointment with the doctor in § 87(2)(b). After the incident, that finger became swollen and enlarged to a size of a marble. § 87(2)(b) could not receive proper medical care for it since he was incarcerated for 10 days after the incident and needed an emergency surgery on § 87(2)(b) to have the tumor removed. § 87(2)(b) was consistent in his preceding statement to the CCRB in regards to this part of the incident [BR 04]. On the day of the interview, November 8, 2017, § 87(2)(b) appeared with a bandage on his fourth and fifth fingers of his left hand [BR 07, 08].

Although § 87(2)(b) did not make this allegation, both Sgt. Dumelle and PO Romero stated that they entered the house with their guns drawn pointed downward [BR 11, 12]. In

addition, § 87(2)(b) was standing with his back towards the officers and would not have been in the position to observe that.

Sgt. Dumelle explained that upon entry, he and PO Romero followed down the hallway and said, “Police, NYPD. Come out with your hands up” [BR 11]. Sgt. Dumelle looked into the apartment/room to his right where he had seen the female earlier but no one was there. § 87(2)(b) said he was in the back, an open space at the end of the hallway. He peeked around the corner with his hands up and said he was coming out. Sgt. Dumelle did not see § 87(2)(b)'s face at that time. § 87(2)(b) came out with his left side towards the officers and was instructed by Sgt. Dumelle to turn around, lay face down on the floor and put his hands behind his back. § 87(2)(b) complied and laid in the doorway of the back room approximately 20 feet away from the officers. Sgt. Dumelle's gun was still drawn at the time and since § 87(2)(b) was in his line of sight, his gun was also pointed at § 87(2)(b). PO Romero holstered his weapon and placed § 87(2)(b) in handcuffs per Sgt. Dumelle's instruction without incident. Sgt. Dumelle did not observe PO Romero place his knee on § 87(2)(b)'s back or step on his hand. § 87(2)(b) never complained of any pain or injury. After § 87(2)(b) was handcuffed, Sgt. Dumelle stepped over him, looked around the room and out the window for other people. During that time, § 87(2)(b) was still on the ground and PO Romero was holding him by his handcuffs. Sgt. Dumelle holstered his gun after that and § 87(2)(b) was stood up and brought outside. Sgt. Dumelle did not have any physical contact with § 87(2)(b).

PO Romero's account of this part of the incident was consistent with that of Sgt. Dumelle [BR 12]. He denied using any force towards § 87(2)(b) placing his knee on his back or stepping on his hand. When PO Romero was transporting § 87(2)(b) to the stationhouse, he informed the officer of a pre-existing leg or foot injury and did not allege that it was exacerbated by the incident. Sgt. Dumelle and PO Guerrier were the only officers in plain clothes on the scene and Lt. Olvin Serrano, who arrived on the scene approximately 40 minutes later based on the Event, was the only bald officer there. Although PO Romero is not a bald officer, nor was he in plain clothes, he acknowledged being the only officer who handcuffed § 87(2)(b) thus, Allegations G and H are being pleaded against him.

The rest of the officers interviewed stated they never entered inside the house after they came down from the roof [BR 13, 14, 15]. PO Guerrier and PO Nelson did not observe any physical injuries to § 87(2)(b) or hear him complain of any. However, PO Atherley stated that when § 87(2)(b) was being placed in the car, PO Romero asked him if he had any preexisting injuries and he replied he did. PO Atherley did not recall what injury § 87(2)(b) stated he had, nor did he observe any injuries to him at the time.

IAB log #17-39651 notes that § 87(2)(b) requested medical assistance at 4:45 p.m. on the following day after his arrest because he allegedly was waiting long to be processed for his three arrests [NYPD 01, 26].

The Threat, resistance and injury report (TRI) #2017-083-000117 generated by Sgt. Dumelle, which does not list the reporting officer information, was initially voided [NYPD 06, 12]. Sgt. Dumelle explained he had to void it to attach his and PO Romero's TRIs together [BR 11]. The subsequent report #2017-083-000118 entered by Sgt. Dumelle notes that § 87(2)(b) alleged that an unknown officer stepped on his foot [NYPD 10]. TRI report #2017-083-000118 prepared by PO Romero notes the same as well as the fact that § 87(2)(b) was taken to the ground [NYPD 10]. PO Romero explained that Sgt. Dumelle entered the report in the system on his behalf and that the forcible takedown was selected by mistake. PO Romero reviewed the report after Sgt. Dumelle entered it but did not see the inconsistency. He reiterated that he never



took § 87(2)(b) to the ground. The handwritten TRI report prepared by PO Romero also notes that § 87(2)(b) was taken down to the ground. When shown PO Romero's report, Sgt. Dumelle explained that he was instructed by officers from Force Investigation Division to indicate that § 87(2)(b) was forcefully taken down to the ground because that was alleged.

The Investigating Supervisor's Assessment Report #2017-083-1117 prepared by Capt. Dominguez was also voided initially [NYPD 21]. The subsequent report with the same number notes that § 87(2)(b) was interviewed by Brooklyn North Investigations Unit at the hospital and made the same force allegations against an officer described as a white male, average build, approximately 5'10" tall [NYPD 07]. He observed that officer instruct another uniformed officer to apply handcuffs. Sgt. Dumelle testified that he observed a male and a female inside the building prior to the entry. Upon entering the house, he saw a male and a female in the hallway. The rest of the account was consistent with his CCRB testimony apart from the fact that he mentioned that he exited the room to check the house and when he came back, he observed § 87(2)(b) in handcuffs sitting in an upright position.

A Medical Treatment of Prisoner Report was not prepared for § 87(2)(b) [NYPD 25, IA179]. None of § 87(2)(b)'s arrest paperwork note that force was used towards him [NYPD 26].

§ 87(2)(b)'s medical records note that on § 87(2)(b), he was diagnosed with an approximately two-centimeter sebaceous cyst that has been present for the past four years but had more than doubled in the last six months [PD 02]. § 87(2)(b) could not recall any trauma. On § 87(2)(b), § 87(2)(b) reported that he had the mass for the past two years after smashing his hand in a door. On § 87(2)(b), a surgery for the removal of the mass was scheduled for § 87(2)(b). According to the Ambulance Care Report (ACR) prepared for § 87(2)(b) the call for the ambulance was received on § 87(2)(b) [PD 04]. § 87(2)(b)'s chief complaint was that an officer had stepped on his pinky finger, which appeared to be have minor swelling. § 87(2)(b)'s hospital medical records note that he was at the emergency room for the same reason as noted in the ACR [PD 02]. An X-ray exam revealed that § 87(2)(b)'s left hand was not tender and fingers had a normal range of motion. There was a two-by-two-centimeter soft tissue mass to his left pinky finger. There were no fractures or dislocations. § 87(2)(b)'s discharge diagnosis was finger pain but the discharge instructions list the condition as a finger sprain. His pre-arraignment screening form prepared on § 87(2)(b) notes, that he was not injured but had a "sprained left" [PD 04]. On § 87(2)(b) § 87(2)(b) visited the hospital for a post-operative follow up and was diagnosed with another cyst on his left hand. He was prescribed Nabumetone, medication used to reduce pain, swelling and joint stiffness from arthritis.

In People v. DePaula, 179 A.D. 2d 424 cited earlier, officers were justified in entering the apartment with their guns drawn pursuant to the emergency doctrine and the circumstances preceding the call that involved a reported crime with a firearm [BR 17]. Based on NYPD Patrol Guide Procedure 221-01, an officer's decision to draw or display a firearm must be based on articulable belief that a potential threat of serious physical injury is imminent [BR 18]. The officer must secure his gun once the threat no longer exists. According to New York Penal Law §35.30, officers may use force to prevent an individual from escaping custody or in self-defense or in defense of others [BR 19].

§ 87(2)(b), § 87(2)(g)

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**Allegation (I) Abuse of Authority: Police Officer Christian Romero damaged § 87(2)(b)s property.**

§ 87(2)(b) alleged that after he was sat up, PO Romero took a bed frame and threw it outside the window [BR 05]. § 87(2)(b) did not know why he did that but assumed that PO Romero might have thought that someone was hiding underneath it. § 87(2)(b) had left the bedframe in the backyard ever since.

§ 87(2)(b) did not mention she observed the alleged misconduct [BR 06].

PO Romero stated that the back room looked messy and various bathroom equipment was thrown around the floor [BR 12]. He acknowledged there was a bed frame without a mattress in the room as well. The frame was in pieces but PO Romero did not recall the material it was made of. PO Romero denied throwing the frame out of the window, touching it or looking under it.

Sgt. Dumelle was consistent with PO Romero and indicated this allegation did not occur while he was in the room [BR 11]. At some point after § 87(2)(b) was apprehended, the female who Sgt. Dumelle had seen earlier came down the stairs from the second floor and Sgt. Dumelle went there to check the rest of the building for any additional civilians.

None of the officers who were on the roof indicated they observed a bed frame being thrown out of the window [BR 13, 14, 15].

§ 87(2)(b), § 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been party to two other CCRB complaints that were referred to the Office of the Chief of the Department [BR 20].
- Sgt. Dumelle has been a member of service for nine years and has been a subject in 14 other CCRB complaints and 25 allegations, of which six were substantiated:
  - 201011266 involved substantiated allegations of frisk and search of a person against Sgt. Dumelle. The Board recommended Command Discipline and the NYPD imposed Instructions.
  - 201409828 involved a substantiated stop allegation against Sgt. Dumelle. The Board recommended Charges but no penalty was imposed since Sgt. Dumelle was found not guilty during APU trial.
  - 201409828 involved allegations of physical force, frisk, and search of a person against Sgt. Dumelle. The Board recommended Charges but no penalty was imposed since Sgt. Dumelle was found not guilty during APU trial.
  - 201601052 involved an exonerated premises entered and/or searched allegation against Sgt. Dumelle.
- PO Guerrier has been a member of service for five years and has been a subject in one other CCRB complaint and one allegation which was not substantiated. § 87(2)(g)
- Both PO Atherley and PO Romero have been members of service for four years and this is the first CCRB complaint to which they have been subjects.

### **Mediation, Civil and Criminal Histories**

- The case was unsuitable for mediation.
- As of September 19, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint [BR 21].
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: 8

Investigator: \_\_\_\_\_

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date